

REPORT OF THE EXECUTIVE DIRECTOR OF CITY DEVELOPMENT

LICENSING SUB-COMMITTEE – 9 SEPTEMBER 2022

LICENSING ACT 2003 – CONSIDERATION OF APPLICATION TO VARY A PREMISES LICENCE TO SPECIFY AN INDIVIDUAL AS A DESIGNATED PREMISES SUPERVISOR

ESTABLISHMENT, 34 LOW ROW, SUNDERLAND, TYNE AND WEAR, SR1 3PY

1.0 PURPOSE OF REPORT

- 1.1 To consider an application to vary the premises licence to specify a new individual as the designated premises supervisor of Establishment of 34 Low Row, Sunderland, Tyne and Wear, SR1 3PY.

2.0 DESCRIPTION OF DECISION

- 2.1 The Sub-Committee is requested to determine the submitted application to specify a new designated premises supervisor of the Establishment. In doing so the Sub-Committee is required to have regard to the representations detailed in Paragraph 4.1 below from Northumbria Police.
- 2.2 The Sub-Committee is only permitted to reject the application if it considers it appropriate to do so for the prevention of the crime prevention objective, ie. the prevention of crime and disorder licensing objective.

3.0 INTRODUCTION / BACKGROUND

- 3.1 The position of designated premises supervisor is an important role. This is confirmed by the following extracts taken from the Secretary of State's Revised Guidance issued under Section 182 of the Licensing Act 2003, ("the Act"), concerning the Act, :-
- (a) *"The 2003 Act provides that, where a premises licence authorises the supply of alcohol, it must include a condition that no supply of alcohol may be made at a time when no designated premises supervisor has been specified in the licence or at a time when the designated premises supervisor does not hold a personal licence or the personal licence has been suspended"* : per Paragraph 10.26;
- (b) *"The main purpose of the 'designated premises supervisor' as defined in the 2003 Act is to ensure that there is always one specified individual among these personal licence holders who can be readily identified for the premises where a premises licence is in force. That person will normally have been given day to day responsibility for running the premises by the premises licence holder. The requirements set out in relation to the designated premises supervisor and authorisation of alcohol sales by a personal licence holder do not apply to community premises in respect of which a successful application has been made to disapply the usual mandatory conditions in sections 19(2) and 19(3) of the 2003 Act (see Chapter 4 of this Guidance)"* : per Paragraph 10.27; and

(c) *“The 2003 Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the 2003 Act and conditions attached to the premises licence to promote the licensing objectives”* : per Paragraph 10.28

- 3.2 On 23 June, 2022 an application was received from Camerons Brewery Limited in respect of the Establishment. They are the premises licence holder of the Establishment. Pursuant to Section 37 of the Act an application was submitted to vary the premises licence to specify Mr David Halpin, (“the proposed individual”), as the designated premises supervisor in place of Mr Mark Connor. A copy of the application form, along with form of consent given by the proposed individual, is attached at Appendix 1.
- 3.3 Mr Halpin currently holds a Personal Licence issued by Gateshead Borough Council.
- 3.4 A copy of the current premises licence for the Establishment is attached at Appendix 2.
- 3.5 In their application Camerons Brewery Limited stated that they would like the application to have immediate effect under Section 38 of the Act. Section 38 has application where an application is made in accordance with Section 37 in respect of premises which authorises the supply of alcohol and the application includes a request that the variation to specify a new designated premises supervisor should have immediate effect. Under Section 38(2) the *“premises licence has effect during the application period as it were varied in the manner set out in the application”*. The application period is defined as starting on the date when the application is received by the Council as the Licensing Authority. In this case, the application from Camerons Brewery Limited to name Mr Halpin as the designated premises supervisor was received by the Council on 23 June, 2022. Consequently, in accordance with Section 38 of the Act Mr Halpin has been appointed the interim designated premises supervisor of the Establishment as from and including the 23 June, 2022. His interim appointment will end upon the occurrence of the following, :-
- (a) If the Section 37 application is granted by the Sub-Committee, ie. when the variation takes effect;
 - (b) If the Section 37 application is rejected by the Sub-Committee, ie. when the rejection is notified to Camerons Brewery Limited; or
 - (c) If the Section 37 application is withdrawn before it is determined by the Sub-Committee, ie. at the time it is withdrawn by Camerons Brewery Limited.
- 3.6 Under Section 37(4)(a) of the Act a notice of an application received under Section 37 must be given by the Licensing Authority to the Chief Officer of Police for the police area in which the premises are situated. The notice must state whether the application is one to which Section 38 applies. Such a notice was given to Northumbria Police by the Council on 23rd June, 2022.

- 3.7 Section 37(5) of the Act states that where a Chief Officer of Police is notified under Section 37(4) is “*satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective*” they “*must give the relevant licensing authority a notice stating the reasons why he is so satisfied*”. Under Section 37(6) the Chief Officer of Police must give that notice within a period of 14 days beginning with the day on which they were notified of the application under Section 37. The period in which Northumbria Police was to respond to the application ended on 7 July, 2022.
- 3.8 Following the submission of the application to appoint a new designated premises supervisor it is understood that the Establishment has not been open and has not traded.

4.0 CURRENT POSITION

- 4.1 On 4 July, 2022 a letter, (ie. an objection notice), was received from Chief Inspector Wheatley of Northumbria Police stating that the Police wished to object to the application to vary the premises licence to specify Mr Halpin as the new designated premises supervisor for the Establishment. A copy of the letter received from the Police is shown at Appendix 3.
- 4.2 Under Section 39(3) of the Act where an objection notice is given under Section 37(5) and is not withdrawn, the Sub-Committee must, :-
- (a) Hold a hearing to consider the objection notice, unless the Council, Camerons Brewery Limited and Chief Officer of the Police who gave the notice agree that a hearing is unnecessary, and
 - (b) Having regard to the notice, reject the application “*if it considers it appropriate for the promotion of the crime prevention objective to do so*”.
- 4.3 Other than the information contained in Appendix 3, as at the date of preparing this Report no additional information has been received by Northumbria Police regarding their objections to the application. It is understood that the Police intend to submit information to support their objections. If additional information is received from the Police this will bring Regulation 18 of the Licensing Act (Hearings) Regulations 2005, (“the Regulations”), into play, ie. : “*In considering any representations or notice made by a party the authority may take into account documentary or other information produced by a party in support of their application, representations or notice (as applicable) either before the hearing or, with the consent of all the other parties, at the hearing*”.
- 4.4 Under Schedule 1 of the Regulations 2005 a hearing to determine an application to vary a premises licence to specify a new designated premises supervisor following receipt of an objection notice from the Chief Officer of the Police should normally be held within 20 working days beginning with the day after the end of the period within which the Chief Officer give notice under Section 37(5) of the Act. As to the application submitted by Camerons Brewery Limited, the hearing should have been held by 4 August, 2022.

- 4.5 However, shortly after the end of the 14 day period during which Northumbria Police were able to make representations on the application, Licensing Officers were aware of pending discussions between Camerons Brewery Limited and the Police about the application. It was understood that the purpose of these discussions was to establish whether an agreement could be reached on the application, with the possible outcome being that it may have been unnecessary to hold a hearing before the Sub-Committee.
- 4.6 Following discussions between Camerons Brewery Limited and Northumbria Police, on 28 July, 2022 Licensing Officers were advised by Camerons Brewery Limited's Miss Laura Spaldin, (Business Development Manager – Leased and Tenanted), that following consideration of the Police's objection they had decided to proceed with application to vary the premises licence to specify Mr Halpin as the new designated premises supervisor. Consequently, Licensing Officers proceeded to make arrangements for a hearing of the application to be held. This was done in consultation with both Camerons Brewery Limited and Northumbria Police and their respective legal representatives.
- 4.7 Having regard to holidays and other commitments, the 9 September, 2022 was the earliest date convenient for all parties concerned to attend the required hearing.
- 4.8 Paragraph 4.40 of the Secretary of State's Revised Guidance states : *"Where the police do object, the licensing authority must arrange for a hearing at which the issue can be considered and both parties can put forward their arguments. The 2003 Act provides that the applicant may apply for the individual to take up post as DPS immediately and, in such cases, the issue would be whether the individual should be removed from this post. The licensing authority considering the matter must restrict its consideration to the issue of crime and disorder and give comprehensive reasons for its decision. Either party would be entitled to appeal if their argument is rejected"*.

5.0 REASONS FOR THE DECISION

- 5.1 In accordance with Section 39(3) of the Act the Sub-Committee is required to determine the application presented by Camerons Brewery Limited to vary the premises licence to specify Mr David Halpin as the new designated premises supervisor in place of Mr Mark Connor. Northumbria Police have objected to the application. Pending the determination of the hearing, as explained at Paragraph 3.3 above, Mr Halpin has been appointed the interim designated premises supervisor.
- 5.2 In the event that the application is granted, or rejected, the Council is required to give notice to that effect to, :-
- (a) Camerons Brewery Limited, as the applicant;
 - (b) Mr Halpin, as the proposed individual; and
 - (c) The Chief Officer of Police for the police area in which the Establishment is situated.

The notice is required to state the Sub-Committee's reasons for granting, or rejecting the application under Section 37 of the Act.

- 5.3 Section 181 of the Act provides that Part 1 of Schedule 5 sets out the provisions regarding appeals in connection with applications under section 37.
- 5.4 The respective rights of appeal are summarised below, :-
- (a) If the Sub-Committee was to reject the application to vary the premises licence in respect of the Establishment to specify Mr Halpin as the premises designated premises supervisor under Section 39, then Camerons Brewery Limited could appeal against the decision : per Paragraph 1(c) of Part 1 of Schedule 5; and
 - (b) If the Sub-Committee was to grant the application and to vary the premises licence in respect of the Establishment to specify Mr Halpin as the premises designated premises supervisor under Section 39, then the Chief Officer of Police who gave the notice under Section 37(5), which was not withdrawn, could appeal against the decision : per Paragraphs 5(1) and 5(2) of Part 1 of Schedule 5;
- 5.5 An appeal would be commenced by the relevant appellant giving a notice of appeal to the designated officer for the Magistrates' Court within 21 days beginning with the day on which the appellant was notified by the Sub-Committee of the decision appealed against.
- 5.6 On determining any submitted appeal, the Court could, :-
- (a) Dismiss the appeal;
 - (b) Substitute for the decision appealed against any other decision which could have been made by the Sub-Committee; or
 - (c) Remit the case back to the Sub-Committee to dispose of it in accordance with the direction of the Court.

The Court could also make such orders as to costs as it thinks fit.

6.0 ALTERNATIVE OPTIONS

- 6.1 None submitted.

7.0 RELEVANT CONSIDERATIONS / CONSULTATIONS

- 7.1 Northumbria Police have been consulted on the application submitted by Camerons Brewery Limited as per the requirements of Section 37 of the Act. There are no other considerations that require the attention of the Sub-Committee.

8.0 GLOSSARY

- 8.1 No acronyms, or abbreviation have been used in this Report.

9.0 LIST OF APPENDICES

- 9.1 Appendix 1 – Application to Vary Premises Licence to Specify Designated Premises Supervisor and; Consent of Individual to Being Specified as Premises Supervisor;
- 9.2 Appendix 2 - Objection Notice from Northumbria Police; and
- 9.3 Appendix 3 – Current Premises Licence for the Establishment.

10.0 BACKGROUND PAPERS

None.